



JOHN MARISCOTTI
EXECUTIVE VICE PRESIDENT

NATIONAL RAILWAY UTILIZATION CORP.

860 Suburban Station / 1617 John F. Kennedy Blvd., Phila., Pa. 19103 / (215) 569-2220

RECORDATION NO. 9149 Filed & Recorded

DEC 30 1977-9 5 AM

December 29, 1977

RECORDATION NO. 9149 Filed & Recorded

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DEC 30 1977-9 5 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th and Constitutional Avenue, N.W.
Washington, D. C. 20423

DEC 30 1977-9 5 AM

INTERSTATE COMMERCE COMMISSION
RECORDATION NO. 9149-A Filed & Recorded

Attention: Secretary

DEC 30 1977-9 5 AM

Dear Sir:

INTERSTATE COMMERCE COMMISSION

It is hereby respectfully requested that the following documents be recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act:

1. Conditional Sale Agreement, dated as of December 17, 1977:

Vendor: Citicorp Leasing, Inc.
399 Park Avenue
New York, N. Y. 10022

Vendee (Purchaser): The Citizens and Southern National Bank
of South Carolina, as Trustee
47 East Camperdown Way
Greenville, South Carolina 29601

2. Management Agreement dated as of December 17, 1977:

Manager: National Railway Utilization Corporation
860 Suburban Station
1617 John F. Kennedy Blvd.
Philadelphia, Pennsylvania 19103

Trustee: The Citizens and Southern National Bank
of South Carolina
(Address as stated above)

3. Bill of Sale:

Builder: National Railway Utilization Corporation
(Address as stated above)

Buyer: The Citizens and Southern National Bank
of South Carolina, as Trustee
(Address as stated above)

7-364A025

DEC 30 1977

Date
Fee \$ 100

ICC Washington, D. C.

*Countersigned Paul M. Thomas
Sponsoring for 300000*



Interstate Commerce Commission
December 29, 1977
Page Two

General Description of the Equipment:

28 Boxcars, Type XM (50", 6" 70-ton), bearing
Road Numbers NSL 102270 through NSL 102297
(both inclusive), and each being marked:

"CITICORP LEASING, INC. - OWNER AND VENDOR"

Very truly yours,

NATIONAL RAILWAY UTILIZATION CORPORATION

A handwritten signature in black ink, appearing to read 'John Mariscotti', is written over the typed name.

John Mariscotti
Executive Vice President

JAM:ebw

Enclosures

RECORDATION NO. 9149-14 Filed & Recorded

MANAGEMENT AGREEMENT

DEC 30 1977-9 55 AM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of December 17, 1977, between **National Railway Utilization Corporation (NRUC)**, and **THE CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA**, as Trustee under a Trust Agreement dated as of December 17, 1977 (the **Trustee**):

W I T N E S S E T H:

WHEREAS, the Trustee has executed and delivered to Citicorp Leasing, Inc., as Vendor (the Vendor), a Conditional Sale Agreement dated as of December 17, 1977 (the **Conditional Sale Agreement**) with respect to the purchase by the Trustee, subject to the terms and conditions therein stated, of 28 70-ton 50'6" Boxcars which are to bear railroad numbers NSL 102270-102297, inclusive (the **Equipment**, and each such Boxcar being herein referred to as a **Unit**), manufactured by the Golden Tye Division of NRUC;

WHEREAS, the Trustee has agreed under the Conditional Sale Agreement to do and perform certain things with respect to the management, maintenance and operation of the Equipment and, consequently, the Trustee desires to retain the services of NRUC, as agent of the Trustee, for such purpose; and

WHEREAS, NRUC is willing to accept such appointment as agent, to perform on behalf of the Trustee all duties and obligations of the Trustee under the Conditional Sale Agreement and to manage the Equipment for the account of the Trustee during the term of this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

1. **Appointment of Agent; Acceptance.** Subject to the terms and conditions of this Agreement, the Trustee hereby appoints NRUC as agent of the Trustee for the purposes herein stated and NRUC hereby accepts such appointment. In such connection, NRUC acknowledges receipt of an executed copy of the Conditional Sale Agreement and hereby agrees that in the performance of its duties as agent hereunder it shall be bound by the terms and provisions thereof and that its rights hereunder and the rights of any railroad through which the Units shall be placed in service or the rights of any railroad with which NRUC, on behalf of the Trustee, shall have executed a per diem

lease in accordance herewith, shall be subject and subordinate to the rights of the Vendor under the Conditional Sale Agreement.

2. **Term.** This Agreement shall remain in force until it shall have been terminated as to all of the Units of Equipment. The term of this Agreement with respect to each Unit shall commence on the date of delivery of such Unit as provided in Section 3 and shall continue for five (5) years, unless sooner terminated as hereinafter provided.

3. **Delivery and Acceptance of Units.** Pursuant to Article 1 of the Conditional Sale Agreement, upon delivery of each Unit of the Equipment to a point designated by NRUC, NRUC will inspect the same and, if such Unit shall be found to be in good order, accept the same for the Vendor and the Trustee by executing the Certificate of Acceptance described in the Conditional Sale Agreement. Upon execution of such Certificate of Acceptance such Unit shall be deemed to be subject to this Agreement. NRUC agrees to deliver to the Vendor and the Trustee executed copies of all such Certificates of Acceptance.

4. **Management Duties.** The agency and management functions to be performed by NRUC hereunder shall include those set forth in the Conditional Sale Agreement and, to the extent not inconsistent therewith, those specifically set forth in this Section 4 and such other duties and responsibilities as shall be agreed upon from time to time by the parties hereto, with the prior written consent of the Vendor:

A. NRUC shall manage and arrange for the utilization of the Units at NRUC's complete discretion and shall perform all necessary administrative acts to ensure the proper utilization of said Units and the protection of the Vendor's and the Trustee's interest therein.

B. NRUC shall make available for the Units the markings of a railroad controlled by NRUC or with which NRUC has executed a per diem lease. The Trustee agrees that on or before delivery of the Units to NRUC, the Units shall have affixed thereto the markings required by Article 5 of the Conditional Sale Agreement and shall be lettered with such railroad markings and the name and/or other insignia used by such railroad. Such name or insignia shall comply with all applicable regulations. The NRUC logotype insignia shall be affixed to each side of the units in standard size.

C. NRUC shall prepare all documents for filing relating to the registration, maintenance and record keeping functions related to the use of the Units in accordance with AAR railroad interchange agreements. Such

matters shall include, but shall not be limited to, the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Units; (ii) registration for each Unit in the Official Railway Equipment Register and the Universal Machine Language Equipment Register directing, *inter alia*, that all correspondence from railroads using such Units shall be addressed to NRUC; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Units. Any record keeping performed by NRUC and all records of payments and charges and all correspondence relating to the Units shall be separately recorded and maintained by NRUC in a form suitable for reasonable inspection by Vendor and the Trustee from time to time during regular business hours of NRUC. NRUC shall supply the Vendor and the Trustee with such reports regarding the use of the Units as the Vendor and the Trustee may reasonably request.

D. NRUC shall perform all car accounting services for the Units and send reports to the Vendor and the Trustee on a quarterly basis itemizing all revenues by Units number.

E. Except for property taxes (which shall be payable, if at all, by the Trustee), NRUC, as agent, will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Unit during the term of this Agreement, including but not limited to all liability and property damage insurance, government fees, repairs, maintenance and servicing. NRUC agrees to pay such amount to the person entitled thereto and to send reports to the Vendor and the Trustee on a quarterly basis itemizing all such payments by Unit number. The Trustee hereby transfers and assigns to NRUC for and during the term of this Agreement all of its right, title and interest in any warranty in respect to the Units. Any recovery under such warranty shall be made payable to NRUC. All proceeds from such recovery shall be used to repair or replace the Units.

F. NRUC shall make or cause to be made such inspections of and maintenance and repairs to the Units as may be required. NRUC shall also make or cause to be made, at its expense, all alterations, modifications, or replacements of parts as shall be necessary to maintain the Units in good operating condition (ordinary wear and tear excepted), in accordance with applicable standards set forth in the Conditional Sale Agreement, throughout the term of this Agreement. NRUC shall be responsible for arranging repairs and maintenance at its expense.

G. NRUC shall collect and receive all mileage charges, car hire revenues (including both basic per diem and incentive per diem paid by other railroads with respect to the Units) and all other revenues, and shall pay such revenues to the Trustee quarterly on March 30, June 30, September 30 and December 30 of each year. NRUC may deduct from such revenues the management fee provided in Section 5 and the maintenance fee provided in Section 6.

It is understood and agreed that NRUC is managing other railroad equipment for its own account and that NRUC may have conflicts of interest between the management of the Trustee's Units and other railroad equipment owned, controlled or managed by NRUC. Although there can be no assurance that the Trustee's Units will earn revenues equal to those of other railroad equipment owned, controlled or managed by NRUC, NRUC agrees to use reasonable efforts to integrate the Trustee's Units into the fleet of railroad equipment controlled by NRUC and to manage the Trustee's Units in a manner consistent with the management by NRUC of railroad equipment for its own account. NRUC shall have no liability under this Agreement except for misfeasance, bad faith or gross mismanagement.

5. Management Fees. In consideration of the management services performed by NRUC, the Trustee agrees to pay NRUC 20% of all revenues earned by the Trustee's Units (net of reclaims); **provided, however,** that the management fee shall under no circumstances be less than \$2.40 per Unit per day. If, because of the foregoing sentence, the management fee exceeds 20% revenues for any calendar year, the Trustee shall have the right to terminate this Agreement. In the event the ICC during the term of this Agreement shall increase the car hire rates (including incentive per diem) and mileage rates, NRUC shall be entitled to additional daily management fees (above the fee based on current car hire and mileage rates) equal to 50% of the increase in such car hire and mileage rates.

6. Maintenance Fee. The Trustee shall pay to NRUC a maintenance fee of \$1.96 per Unit per day during the term of this Agreement. The maintenance fee shall be held in escrow by NRUC in an account completely segregated from all other funds of NRUC. The funds in such account shall only be used for maintenance. At the termination of this Agreement any funds not expended for maintenance shall be retained by NRUC; **provided, however,** the Trustee shall have the right to inspect the Units at the termination of this Agreement to determine that the Units are in good working order and repair (normal wear and tear excepted) and NRUC shall cause to be made at its expense such repairs as are necessary to restore the Units to such condition. The maintenance fee shall be subject to increase (but not decrease) as follows:

If the labor rate established by the Association of American Railroads and in effect on December 31 of each year

commencing December 31, 1978 (the **Prevailing Labor Rate**) shall differ from the labor rate so established and in effect on the date hereof (the **Current Labor Rate**), the maintenance fee shall be adjusted to be the product obtained by multiplying the maintenance fee by a fraction, the numerator of which is the Prevailing Labor Rate and the denominator of which shall be such Current Labor Rate. Any such adjustment shall be instituted by notice from NRUC to the Trustee and shall take effect with respect to maintenance fees coming due next after the date of such notice; **provided, however**, that no adjustment shall be made which would reduce the maintenance fee below the initial maintenance fee.

7. **Insurance.** NRUC will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained insurance with respect to all Units subject hereto, and all risks, physical loss or damage insurance and public liability insurance in amounts and against risks required to be maintained by the Trustee under the Conditional Sale Agreement. NRUC will furnish to the Trustee and the Vendor, concurrently with the execution hereof and thereafter at intervals of not more than twelve (12) calendar months, proof of insurance coverage for the ensuing year. NRUC will agree to advise the Trustee and the Vendor promptly of any lapse of any such insurance or of any default of payment of any premium and of any other act or omission of NRUC of which it has knowledge which might, in its opinion, invalidate or render unenforceable, in whole or in part, any insurance on the Units. All insurance shall be taken out in the name of, and losses paid thereunder shall be payable to, NRUC, the Trustee and the Vendor, as their interests may appear. The policies or certificates shall provide that there shall be no recourse against the Trustee or the Vendor for the payment of premiums and shall provide for at least thirty (30) business days prior written notice to be given to the insureds by the underwriters in the event of cancellation. If NRUC shall default in the payment of any premium in respect of any such insurance policies, the Trustee and the Vendor may, but shall not be obliged to, pay such premium, and if either the Trustee or the Vendor shall do so, NRUC shall repay the amount thereof to the Trustee or the Vendor on demand, together, in the case of any such payment by the Vendor, with interest in the amount of 11 1/4% per annum.

8. **Possession and Use.** NRUC, as agent, shall be entitled to the possession of the Units and shall also be entitled (i) to the use of the Units by it or any affiliate upon lines of railroads owned or operated by it or any affiliate or upon lines of railroads over which NRUC or any such affiliate has trackage or other operating rights or over which railroad equipment of NRUC or any such affiliate is regularly operated pursuant to contract; (ii) to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements; and (iii) to lease any Unit or Units to other companies incorporated under the laws of any state of the United States or the District of Columbia, for use

in connection with their operations, but only upon and subject to all the terms and conditions of this Agreement and the Conditional Sale Agreement. NRUC shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

NRUC agrees that to the extent it has physical possession and can control use of the Units, the Units will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and order of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either the Trustee or NRUC may in good faith and by appropriate proceedings contest the application of any such rule, regulation, or order in any reasonable manner at the expense of the contesting party. NRUC will not directly or indirectly create, incur, assume or suffer to exist, any mortgage, pledge, lien, charge, encumbrance or other security interest or claim on or with respect to the Units or any interest therein or in this Agreement, except the rights of the Vendor under the Conditional Sale Agreement. NRUC will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time by persons claiming through or under NRUC.

9. Default.

A. The occurrence of any of the following events shall be Evnts of Default hereunder:

(i) The nonpayment by either party of any sum required hereunder to be paid by the other party within ten days after notice thereof;

(ii) The default by either party under any other term, covenant or condition of this Agreement which is not cured within ten days after notice thereof from such party.

(iii) Any affirmative act of insolvency by NRUC, or the filing by NRUC of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against NRUC that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of NRUC, unless such petition or apointment is set aside or

withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of the property of NRUC to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which substantially impairs the capacity of NRUC to fulfill its obligations under this Agreement.

10. Remedies Upon Default.

A. Upon the occurrence of any event of default by one party to this Agreement, the other party may terminate this Agreement and proceed by appropriate court action to enforce performance by the other party of this Agreement and to recover direct financial damages which result from a breach thereof and such defaulting party shall bear the other party's costs and expenses, including reasonable attorney's fees, in securing such enforcement;

B. In the event of default by NRUC, the Trustee may, by notice in writing to NRUC, terminate the right of possession of NRUC of the Units, whereupon all right and interest of NRUC in the Units shall terminate; and thereupon the Trustee may by its agents enter upon any premises where the Units may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of NRUC;

C. In the event of default by the Trustee, NRUC, by notice in writing to the Trustee, may terminate its obligations hereunder.

11. **Termination.** At the expiration or termination of this Agreement as to any Units NRUC will surrender possession of such Units to the Trustee by delivering the same to the Trustee. The assembling, delivery, storage, and transporting of the Units shall be at the expense and risk of the Trustee. A Unit shall be deemed terminated and no longer subject to this Agreement upon removal of the railroad markings from the Unit placed thereon by NRUC and the placing thereon of such markings as may be designated by the Trustee.

NRUC, at the expense of the Trustee, will arrange for storage of the Units for such period of time as shall be required by the Trustee or the Vendor.

If such Units are not on the railroad line of NRUC or its affiliates upon the expiration or termination of this Agreement, all costs of assembling, delivering, storing, and transporting such Units, except as provided above, to NRUC's railroad line or the railroad line of a subsequent agent, purchaser or lessee shall be borne by the Trustee.

From and after termination of this Agreement with respect to any Unit and until its return to the Trustee, all revenues earned by such Unit shall be paid to the Trustee after deducting the management fee provided in Section 5.

12. Indemnities. NRUC will defend, indemnify and hold harmless the Trustee from and against:

A. Any and all loss or damage of or to the Units, usual wear and tear excepted;

B. Any claim, cause of action, damage, liability, costs or expense (including legal fees and costs to which the Units may be subject or which may be incurred in any manner by or for the account of any such Unit) as a result of the use, maintenance, repair, replacement, operation or the condition thereof.

13. Warranties and Covenants. NRUC represents, warrants and covenants that:

A. NRUC is a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and has the corporate power and authority, and is duly qualified and authorized to do business whenever necessary, to carry out its present business and operations and to own or hold its properties and to perform its obligations under this Agreement.

B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to NRUC, or result in any breach of or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of NRUC or on the Units pursuant to any instrument to which NRUC is a party or by which it or its assets may be bound.

C. There is no action, suits or proceeding pending or threatened against NRUC before any court or administrative agency or other governmental body which, if adversely determined, might have a material adverse effect on the business properties, assets or condition, financial or otherwise, of NRUC.

D. NRUC is not a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as NRUC can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of NRUC or the ability of NRUC to perform its obligations under this Agreement.

E. NRUC or its affiliated railroad is eligible and entitled to collect incentive per diem charges on the Units in the possession of other railroads and to apply the incentive per diem

charges to the payment of all amounts due to the Trustee under this Agreement.

F. Neither NRUC nor its counsel know of any requirements for recording, filing or depositing this Agreement other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of the Vendor in the United States of America.

Upon request of the Trustee or the Vendor from time to time, NRUC shall deliver to the Trustee and the Vendor an opinion of its counsel addressed to the Trustee and the Vendor, in form and substance satisfactory to the Trustee and the Vendor, which opinion shall confirm and be to the effect of the matters set forth in this Paragraphs A thru F of this Section 14.

14. Lease and Assignment.

A. NRUC shall not have the right to assign this Agreement without the prior written consent of the Trustee and the Vendor.

B. All rights of the Trustee hereunder are hereby assigned, pledged, mortgaged, transferred by the Trustee to the Vendor as additional security for the obligations of the Trustee under the Conditional Sale Agreement and NRUC hereby acknowledges such assignment and agrees to pay all revenues and other monies due to the Trustee hereunder directly to the Vendor at the address provided herein. This Agreement and NRUC's rights hereunder are and shall be subject and subordinate to the rights of the Vendor under the Conditional Sale Agreement.

The making of the foregoing assignment by the Trustee shall not serve to relieve the Trustee of any liability or undertaking hereunder, nor shall such assignment impose any liability or undertaking hereunder upon the Vendor.

15. Miscellaneous.

A. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

B. Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Trustee at: 47 East Camperdown Way
Greenville, South Carolina 29602
Attention: Trust Officer

NRUC at: 860 Suburban Station
1617 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

Vendor at: 399 Park Avenue
New York, New York 10022
Attention: Manager, Contract Administration

or such other address as either party or the Vendor may from time to time designate by such notice in writing to the other.

C. NRUC shall take all action requested by the Trustee or the Vendor to confirm the interest of the Trustee or the Vendor in the Units and that NRUC has no interest in the Units other than as Agent hereunder.

D. During the continuance of this Agreement, the Trustee and the Vendor shall have the right at their own cost and expense, to inspect the Units at any reasonable time or times wherever the Units may be.

E. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to such party nor shall any waiver or indulgence by either party or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

F. This Agreement shall be governed by and construed according to the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above written.

NATIONAL RAILWAY UTILIZATION CORPORATION

DATE: 12-29-77

BY: *John H. Pies*
Title: President

ATTEST:

[Signature]
Title: Assistant Secretary



THE CITIZENS AND SOUTHERN NATIONAL BANK OF
SOUTH CAROLINA

DATE: Dec 29, 1977

BY: [Signature]

Title: VICE PRESIDENT & SR. TRUST OFFICER

ATTEST:

Dolan M. Foris

Title: Assistant Trust Officer

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

On this 29th day of December, 1977, before me personally appeared John H. Rees, to me personally known, who, being by me duly sworn, says that he is _____ President of National Railway Utilization Corporation, and John A. Mariscotti, to me personally known to be the ^{Asst} Secretary of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth B. Wood
Notary Public

(Seal)

My Commission Expires: 5/6/81

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

On this 29th day of December, 1977, before me personally appeared Wade Bryant, to me personally known, who, being by me duly sworn, says that he is Vice President of The Citizens and Southern National Bank of South Carolina, and Douglas M. Farls, to me personally known to be the Asst. Trust Officer of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth B. Word
Notary Public

My Commission Expires: 5/6/81

(Seal)